Reforming the working methods of the United Nations Security Council – Conference Brief

Background

The Academic Platform Switzerland UN in partnership with the University of Geneva Law School and the Graduate Institute of International and Development Studies organised its 2012 Annual Conference on 31 October 2012 in Geneva. The conference, entitled *Reforming the working methods of the United Nations Security Council,* brought together high-level experts including academics and diplomats to analyse and discuss the comprehensive reform of the Security Council (SC) and issues of transparency, accountability and relationship between the General Assembly (GA) and the Security Council. More specifically, the Swiss contribution in the reform process and the "Small Five" (S5) initiative developed with Costa Rica, Jordan, Liechtenstein and Singapore were discussed. This brief report highlights topics discussed and conclusions made during the conference.

Historical Perspective of UN Reform

The United Nations have shown a remarkable resilience capacity over the years, by developing mechanisms able to face the changing international environment such as shifting balance of power, Cold War, rise of the third world, internal pressures linked to voting system or finances, development of the legal system, gradual constitutionalisation of international society, crisis of multilateralism, financial crisis, etc.

Ways to Reform

A number of UN reforms have been undertaken and are on-going. Reforms such as those pertaining to the Security Council are difficult and can be achieved through legal mechanisms entailing amendments to the UN Charter. However, the political accord of the five permanent members is needed. Consequently, reforms have taken place the following ways:

First, by way of interpretation: For example, the interpretation of the first purpose of the United Nations has evolved toward the concept of human security, whereby the focus is no longer on states but includes the protection of populations from serious human rights violations.

Furthermore, the sanctions system has evolved from comprehensive to targeted sanctions. Another example is the linkage between security and justice, a good example being the international criminal tribunal created within the framework of Chapter VII of the UN Charter. Lastly, the interpretation of international law is influenced by the rule of law concept, which brings to the fore the question of accountability.

Secondly, through the creation of subsidiary organs: The creation of a plethora of new institutional structures has largely changed the UN organisation and resulted in very diverse organs such as UNCTAD, UNEP, OHCHR, criminal tribunals, Human Rights Council, Peacebuilding Commission, etc.

Thirdly, through the practice of the organisation: Practices, which were given legal significance by the International Court of Justice, have become institutionalised and resulted in a number of items being shifted from the Security Council to the General Assembly.These highlighted examples show that the UN has adapted to external pressures through a soft process and not through formal amendments.

On the Relationship between the General Assembly and the Security Council

A panellist analysed the voting pattern in the General Assembly forum. Voting in the General Assembly has increased dramatically during the Cold War period. Thereafter, resolutions were increasingly adopted by consensus. Furthermore, resolutions addressing human rights or the Middle East are more likely to be voted. Consequently, it was emphasised that compromise is being sought during the negotiation process and the GA forum is not necessarily encroaching on the Security Council agenda. Rather, it takes over the issues which doenot find a solution in the Security Council arena.

The shortcomings of the General Assembly were discussed. It was noted that in the course of its 3-months annual session the General Assembly discussions are channelled through a pre-set agenda and adopts some 200 often lengthy resolutions, which are generally slightly adjusted and do not bring up major new issues.

Yet, a panellist explained that the General Assembly represents a true counterweight to the Security Council. Indeed, its purpose is not to take quick decisions but to give a chance to all states to bring up their concerns and discuss them in a proper manner. Furthermore, the GA has developed new patterns of discussion in the past year, notably through the high level meetings convened prior to the GA formal session in order to discuss issues of concern with the participation of Heads of States and Ministers. Lastly, the example of the contribution of the GA President of the 65th session, Joseph Deiss, was noted. The President's emphasis of the UN role in global governance resulted in the inclusion of economic governance as a formal agenda item.

Issues of Transparency and Accountability

A panellist introduced the concept of transparency as a catchword of today. Transparency is expected to transcend the work of organisations. However, it was noted that the transparency language is unlikely to resonate in the Security Council. As many authors have pointed out, the

Security Council is like the police in the temple (which would be the GA), the permanent members of the Security Council (P5) dominant role reflects the absence of a legal culture within the Security Council and sensitivity for the rule of law is lacking in the Council.

The S5 proposal notably put forward that the P5 should be "explaining the reasons for resorting to a veto or declaring its intention to do so, in particular with regard to its consistency with the purposes and principles of the Charter of the United Nations and applicable international law". Indeed, giving reasons has a channeling function. It fortifies the legal reasons and strengthens the normative power of international law. In the current situation, a Permanent-5 is already bound to some extent to give reasons for opposing its veto in the Security Council. Indeed, a country X will argue that it opposes its veto for national reasons but it cannot say it condones serious human rights violations in country Y.

Another core question of contemporary governance is: To whom is the Security Council accountable to? In the UN framework, it was put forward that the Charter serves as a constitution, a type of public authority. Consequently, the Security Council is accountable to the plenary organ represented by the General Assembly. The reports the Security Council submits to the General Assembly do represent a means of accountability. However, there are diverging views about the content of those reports. Some states defend the view that reports are supposed to be a mere diary of SC decisions. Others claim they should be a basis to evaluate the function of the Security Council. Consequently, the reports shall be analytical and include reasons and explanations for the decisions taken and those not taken. Accountability has gradually been intensified but the process is to be pushed further.

The challenge is to create another mind-set, a legal culture in the Security Council and integrate transparency, accountability and inclusiveness as values when interpreting reality.

An Overview of the Proposals for UN Security Council Reform

The Endless Saga: Intergovernmental Negotiations on Security Council Reform

Calls for reforming the SC have been heard in the UN since the early 90s. In 1992 the GA adopted Resolution 47/62, inviting Member States (MS) to submit 'written comments on a possible review of the membership of the Security Council'. So numerous were the feedbacks received, that the GA decided in its Resolution 48/26 of 1993 to create an "Open-ended Working Group on the Question of Equitable Representation and Increase in the Membership of the Security Council and Other Matters related to the Security Council", meant to provide a formal forum for consultations on reform of both the expansion of the Council (cluster I) and working methods (cluster II).

The ensuing phase of negotiations culminated in the adoption of resolution 53/30 of 1998, which established that any future resolution on expanding the SC would need at least a two-thirds majority to pass. Such a compelling requirement, coupled with the failure to agree on the 1997 reform plan envisaging a 24-member Council comprising 5 additional permanent members, led to a stalemate in negotiations. In the face of that, the then Secretary General (SG) Mr. Annan resolved to appoint a *High Level Panel on Threats, Challenges and Change* with the task to provide suggestions on security matters, comprising a reform of the Council. On the latter point, the report issued by the Panel, and later endorsed by Mr. Annan, put forward two models of reform. Model A proposed adding six new permanent seats, with no veto power, and three new

two-year term elected seats. Model B established a new category of eight seats, renewable every four years, and one new two-year non-renewable seat.

The SG initiatives ushered in a new momentum in negotiations. During the 2005 World Summit, Member States' positions started coalescing in a number of initiatives. The G-4 (Japan, Germany, India and Brazil) tabled a draft resolution advocating for the establishment of six new permanent seats – the four sponsors and two African states – and four non-permanent seats; whereas several States of the Uniting for Consensus (UfC) group put forward a proposal for a 25-member Council, with 10 additional two-year rotating seats. The African group made a further proposal, built upon two positions papers – 'the Ezulwini-Consensus' and the 'Sirte-Declaration'– adopted in 2005 and calling for the two permanent seats with the right of veto allotted to Africa and five non-permanent members. Bogged down in persistent differences, negotiations relapsed into a dormant phase by the end of the Word Summit.

In 2007, the Chair of the Open-ended Working Group proposed to resume consultations around five main tracks, namely the size of an enlarged Security Council, the categories of membership, the question of regional representation, the question of the veto, the working methods of the Security Council & the relationship between the Security Council and the General Assembly. Whereas the Chair of the Working Group acted initially as facilitator, since 2009 the intergovernmental negotiation process is the official forum for Member States to discuss reform of the Security Council. As of 2010, the discussions have been based on a text, incorporating submissions from the various interest groups and individual Member States. Negotiations are currently in their eighth round.

Member states' positions mainly revolve around four proposals. The G4 calls for expansion in both the permanent and non-permanent membership of the Council, as well as improvements in its working methods. The UfC speaks only for an increase in the non-permanent membership of the Council. The African Group demands that Africa should be allocated two permanent seats in the Council with all the prerogatives and privileges of the current permanent members (including the right of veto), as well as five non-permanent seats on the Council. Another interest group in the question of Security Council reform is the L.69 group, named after draft resolution A/61/L.69, from 2007. It calls for an expansion of the Council in both the permanent and non-permanent category, bringing the total number of SC members up to around 25. So far, none of these proposals has found enough support to win the support of a two-thirds majority in the GA.

Reforming the Working Methods of the Council

The above recalled discussions hinge mainly on the enlargement of the Council composition, therefore implying a formal Charter amendment. Another strand of proposals has blossomed throughout the last couple of decades, namely concerning the reform of the Council working methods. From 1993 onwards, the Council itself took some important steps e.g. publicizing its daily program (S/26015), publishing tentative monthly work schedule (S/26176), making almost final ('in blue') draft resolutions available (S/1999/165), providing greater transparency on procedures of the sanctions committee (S/1995/234, S/1995/438, S/1996/54), on peacekeeping operations (S/PRST/1994/22); initiating meetings between Council and troop-contributing countries (S/PRST/1994/22); and launching "Arria-style meetings," in which a member of the Council could invite experts or representatives of civil society for a discussion without issuing a formal statement.

Fostering change in the latter direction has become the goal of several Member States outside the Council's chamber. First in 2006 and later in April 2012, Costa Rica, Singapore, Jordan, Liechtenstein and Switzerland have presented before the GA a joint draft resolution on Improving the Working Methods of the Security Council. The proposal is broad in scope, touching upon issues of transparency, accountability and effectiveness as well as of security. In the 'transparency cluster' one can find recommendations concerning **participation in the decision making process of the Council and of its subsidiary bodies** (e.g. standing invitation to the Chairs of the PBC country-specific configurations to formal debates and eventually to consultations [point 2], informal opportunities for non-member states to provide information to subsidiary bodies [point 8]); **the follow-up on the implementation of SC decisions** and elaboration of lesson learned [point 6]; the **mainstreaming the progress** achieved in thematic areas by **applying the key provisions of thematic resolutions to country specific situations** [point 16]; **the adoption of rules of procedure and of other reporting obligations aimed at enhancing the implementation of Presidential statements** [point 15]. The 'security cluster' deals with **SC mandated and on-site missions** [points 12-14] and **the use of the veto** [points 19-21]. The **management of sanctions regimes** is addressed in connection with subsidiary bodies [points 7-11].

The draft proposal has met with different reactions: while the G-4 group has warmly supported the initiative, the L.69 group has proved suspicious, fearing the proposal could be a Trojan horse to push for a G-4 oriented overall reform. The Council Permanent Members have been eager to stress that the proposed changes should be dealt with and decided by the Council; a GA resolution could not provide a shortcut to reform. The UN Office of Legal Affairs has also expressed itself. In a note of May 14th 2012, Ms. P. O'Brien's, Under-Secretary General for Legal Affairs, submitted that the proposals on working methods should be adopted on the basis of a two-thirds majority, allegedly in accordance with 'the practice of the GA in dealing with SC reform'. While implicitly conceding that the GA could adopt a resolution of the above recalled content, the position expressed in the note can be questioned for equating the recommendations contained in the proposals with a reform, which would need a Charter amendment.

To avoid a formal vote in such a bitter climate, the five sponsors eventually withdraw their proposal. The risk was to unduly freeze further discussion on the issue of working methods. Negotiations on the latter topic seem yet more promising than those on membership issues and enlargement. If endorsed by the Council members, improvements in the working methods could have an impact on the activity of the Council as it now stands. Coming to an agreement on such issues could also help enhancing intergovernmental discussions on broader reform projects. That the time may be ripe for a step forward in the reform of working methods is suggested by a number of clues. In 2011, the UK stated its support for the Council working in an open, effective and transparent manner and declared itself to be "at the forefront of efforts to improve Council working methods"; France also seemed committed to limit the use of veto in case of suspected genocide or crimes against humanity. Besides, a resolution on drafting methods may soon come under consideration. The resolution would allow, *inter alia*, the elected SC members to participate along with the Permanent-5 to the drafting of resolutions. In spite of some encouraging signs, the path to walk is still long.

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Annex: Conference Programme

THE GRADUATE INSTITUTE | GENEVA

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WEDNESDAY 31 OCTOBER 2012

REFORMING THE WORKING METHODS OF THE UNITED NATIONS SECURITY COUNCIL

This event is organised by the Graduate Institute of International and Development Studies, the Faculty of Law of the University of Geneva and the Academic Platform Switzerland UN

4:15 PM | WELCOME ADDRESS

PHILIPPE BURRIN, Director, the Graduate Institute

LAURENCE BOISSON DE CHAZOURNES, President, Academic Platform Switzerland UN; Professor, University of Geneva

4:20 − 6:00 PM | ROUNDTABLE

ISSUES OF TRANSPARENCY, ACCOUNTABILITY AND RELATIONSHIP BETWEEN THE GENERAL ASSEMBLY AND THE SECURITY COUNCIL

With the presence of **H.E. MR. PAUL SEGER**, Ambassador of Switzerland to the United Nations

Chair

NICOLAS MICHEL, Professor, University of Geneva and the Graduate Institute

Speakers

VERA GOWLLAND, Honorary Professor, the Graduate Institute

SIMON HUG, Professor, University of Geneva

THOMAS FITSCHEN, Ambassador, Deputy Permanent Representative of Germany to the United Nations in Geneva

JÜRG LINDENMANN, Deputy Director, Directorate for Public International Law, Swiss Federal Department of Foreign Affairs

ANNE PETERS, Professor, University of Basel and Wissenschaftskolleg, Berlin

ANDREA BIANCHI, Professor, the Graduate Institute

Discussions will take place in English and French without translation service

6:15 − 7:30 PM | KEYNOTE ADDRESS

IS THERE ANY WHITE SMOKE COMING OUT OF THE SECURITY COUNCIL CHAMBER? THE LONG STORY OF THE COMPREHENSIVE REFORM OF THE SECURITY COUNCIL

PAUL SEGER

Ambassador of Switzerland to the United Nations

DISTRIBUTION OF THE ACADEMIC PLATFORM SWITZERLAND UN AWARD 2012

This event will be followed by cocktail

→ Auditorium Jacques-Freymond, site Barton, 132 rue de Lausanne, 1202 Geneva
Free entrance
For more information and registration, please contact: **apsun@graduateinstitute.ch** by 26 October